Written by **Bob Adelmann** on December 29, 2014

Court Rejects Attempt to "Regulate" Bullets & Shot

On Tuesday, December 23 Judge David Tatel of the District of Columbia's Circuit Court of Appeals rejected another attempt to force the EPA to regulate bullets and shotgun shells out of existence.

It wasn't even close. The first time the environmentalist groups sued back in 2010 it was a frontal attack, demanding that the EPA prohibit the "manufacture, processing and distribution in commerce of lead shot [and] bullets." The petition was thrown out on the basis that the EPA's rules expressly and unambiguously prohibited the agency from making any such rules regarding bullets and shotgun shells.

While the lawsuit was portrayed as "concern" for the trumpeter swan and other creatures that might ingest the highly toxic lead bullets or shot lying on the ground left behind by hunters and shooting sportsmen, many saw it as a backdoor attack on the Second Amendment.

Tatel had to wade through all the underbrush in order to reach his conclusion: The EPA had no such power.

First Tatel had to acknowledge the subterfuge: "In this case, 101 environmental groups … filed a petition with [the] EPA asking it *to regulate spent lead bullets and shot.*" (Emphasis in original.)

He then ruled:

> The environmental groups have suggested no way in which [the] EPA could *regulate spent lead bullets and shot* without also regulating cartridges and shells — precisely what section 3(2)(B)(v) prohibits. [Emphasis in original.]

That 3(2)(B)(v) section, in its convoluted way, clearly puts the issue of regulating ammunition off limits to the EPA. Here's Tatel's explanation from the first ruling against the environmentalists:

> [The] EPA denied that … petition on the ground that the [Toxic Substances Control Act of 1976] does not provide the agency with [the] authority to address lead shot and bullets as requested … due to the exclusion found in TSCA Section 3(2)(B)(v)…
>
> That section exempts from the definition of "chemical substance" [defined as "any element" like lead], and therefore from TSCA's scope, "any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code" … which in turn taxes "[s]hells and cartridges."

Six months after that ruling, overeager attorneys for environmental groups seeking to emasculate the Second Amendment tried again, submitting a new petition concerning "spent lead ammunition." This time, according to Tatel, they petitioned the EPA seeking "regulations that adequately protect wildlife, human health and the environment against unreasonable risk of injury from bullets and shot containing lead used in hunting and shooting sports."

Because the issue of "spent" bullets and shot was missing from the section, those groups thought they'd found a loophole through which they could drive their anti-gun agenda. They claimed, according to Tatel, that that section "does not prohibit [the] EPA from regulating spent bullets and shot."

Last October Tatel and the other two judges listened to environmentalists during oral arguments as they recounted "numerous harms resulting from the fact that spent lead ammunition is uncontrolled and lead remains widely encountered and distributed in the environment from hunting and sport shooting sources."

However, according to Tatel the law is the law and section 3(2)(B0(v) "unambiguously exempts 'article[s] the sale of which [are] subject to the tax imposed by section 4181 of the Internal Revenue Code' from the definition of 'chemical substance.'"

Tatel's coup de grâce was administered sharply:

> Given that *bullets and shot can become "spent"* only if they are first contained in a cartridge or [a] shell and then fired from a weapon, petitioners have identified no way in which [the] EPA could regulate spent bullets and shot without also regulating cartridges and shells — precisely what section 3(2)(B0(v) prohibits.

The subterfuge failed when, during oral arguments, one of the attorneys from the environment group insisted that, wrote Tatel, "[a]ll we're trying to regulate are bullets sold separately, whether to a hunter or to a manufacturer of cartridges."

To their credit, Tatel (a Clinton nominee) and the other two judges (both Obama nominees), saw through the maneuver. The ruling, had it gone the other way, would have jeopardized the Second Amendment severely, as 95 percent of all domestically manufactured ammunition is made with lead.

Anti-gunners, all dressed up to look like lovers of trumpeter swans, will continue to hammer at the door, hoping to find a way inside and eliminate private firearm ownership in the United States. To them Tatel's ruling is merely a temporary setback in their long war against guns.

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